Advocating for Children of Separating Parents

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This article draws upon the author’s lay experiences of helping two sets of divorcing parents to retain contact and meaningful relationships between their young children and their non-resident fathers. It argues that the failure to take account of past parenting practices in divorce proceedings, to grant children party status and to make independent representation available to them, and to offer child-centred services to help parents to practise shared parenting post-separation, may contribute to the widespread loss of contact between children and their non-resident parents, particularly fathers. The Family Law Act 1996 promises little change. © 1998 John Wiley & Sons, Ltd.

Parental separation is now a feature of the lives of enormous numbers of children. Latest statistics for England and Wales (Haskey, 1996a) indicate that 88 000 couples with 165 000 children under 16 divorced in 1994, and the parents of countless other children separate without going through the divorce courts. Legislation in the form of the Children Act 1989 and the Child Support Act 1991 amended in 1995 seeks, in such circumstances, to preserve the continuing involvement of both parents in aspects of a child’s upbringing, and the Children Act is based upon the assumption that children’s interests are best served by carers working in partnership, preferably without the imposition of a court order.

However, the reality for many families, where parents have separated, is that the emotional and material turmoil that is created ill prepares the parties to work together in harmony in the interests of their children. Access to mediation and conciliation services and contact centres is limited, and the facilities of the first two, like the family court welfare services, are chiefly focused on pre-hearing dispute resolution rather than on assisting parents in the ongoing practice of shared but separate parenting. As comparatively uncharted water, arguably this may be even more difficult for individuals to navigate than their previous form of parenting. To find themselves effectively on their own in sorting out post-separation caring can be
particularly difficult for parents in a context where divorce court processes may lead to 'imposed cooperation' (Roche, 1991, p 360), and where society generally is uncertain about gender roles, especially those of fathers.

A while ago I became involved in negotiating contact arrangements for two small boys in different families where marital breakdown was followed by divorce proceedings. My observations of their experiences led me to reflect on the reasons why so many children, who traditionally have continued to live with their mothers, so quickly lose touch with their fathers in the wake of family break-up—according to Jackson and Wroath (1994), within 5 years of their parents’ separation, half of the children involved had lost touch with their non-resident parent. I concluded that separate representation for all children and extended independent child-centred support should be available, as a matter of course, to separating families and that this might help them to develop successful models of shared parenting.

Two families

I had known Matthew, a white 7-year-old, and Surgit, an Asian 3-year-old, since birth and, as a qualified and experienced but currently non-practising social worker, I recognised the problems of partisan intervention in their family crises. However, I became increasingly disturbed by each child’s mounting distress, isolation and marginalisation in the context of what Wallerstein and Kelly (1980) identify as a reduced capacity on the part of divorcing parents to respond to their needs. Reluctantly I agreed to act in a mediating capacity when it became clear that, in each case, no other help was forthcoming to promote purposeful discussion about contact arrangements. Both couples described their precipitating difficulties in terms of marital rather than parenting problems and domestic violence did not feature. Neither parent in either family expressed any concerns about their erstwhile partner’s child-care skills or practices, and each stated their wish that their child should continue to have two actively involved parents. But, being in conflict, typically neither pair had a functioning communication system to promote this. Studying children living in reordered families, Cockett and Tripp (1994) found that the majority of separating couples had been completely unable to communicate effectively with each other about child care arrangements.

Of particular interest in Surgit’s and Matthew’s families was a common pattern of well-established parenting whereby each father had cared directly for his child for significant periods of time, and this had remained the case up to the point of marital separation. Surgit’s father and his extended family looked after the child at the end of every day and at weekends when his wife was at work: he was active in meeting his son’s health, developmental and clothing needs. From babyhood, Matthew’s father had always got him up in the mornings and put him to bed at night, and from Friday night to Monday morning the little boy was parented by him single-handedly. This child’s mother ran a business with long hours of work and, supported by the services of a weekday child-minder, the couple had always shared child-care and income-generating activities in mutually acceptable ways. Thus these fathers both ‘cared for’ and ‘cared about’ their children (Boyd 1996, p 497).

Benefiting from these arrangements in each case was a happy and well-adjusted child. Both fathers had traditional views about the shaping of boys into men and both enjoyed sharing
‘manly’ activities with their sons—cleaning the car, doing household repairs and kicking footballs—but both fed, bathed, dressed and cleared up after their children as regularly as, and in Matthew’s case, much more frequently than the child’s mother. In terms of the ‘conduct’ rather than the ‘culture’ of fatherhood (LaRossa, 1988), the men’s interactions with their sons were therefore not dominated by play but included the three key elements of engagement, accessibility and responsibility (Lamb, 1987). Both fathers were competent carers as a result of routinely assuming single-handed care-taking and learning by doing (Burgess and Ruxton, 1996). They felt confident in and committed to looking after their children. Given that Matthew’s and Surgit’s fathers had played such a central role in their material and emotional lives, parental separation had serious consequences for both of them: in a matter of weeks, they all but lost contact with their fathers.

Matthew

Matthew’s parents kept negotiations about his future out of the court arena. No report was called for from the court welfare service and no other professional helping agency became involved. Their divorce went through with no order being made under the Children Act 1989 in respect of Matthew because his ostensibly cooperating parents had apparently agreed plans for his upbringing. He was to stay with his mother Monday evenings to Friday mornings and move down the road to his father for three nights every weekend, holidays were to be split between them, and he was to continue attending school as previously. Such arrangements were palpably in the child’s interests not least because they built upon past patterns of caring (Fineman, 1989), minimised disruption and enabled him to spend significant amounts of time with the two most important people in his life.

However, a fortnight before the final court hearing, Matthew’s mother announced that she would be moving 300 miles away to enable her new partner to accept an offer of employment, and the child would go too. By this time both parties had spent large sums of money on solicitors to cope with acrimonious disagreements about property and finance, and both were desperate for matters to be resolved. The father feared antagonising his wife with additional legal intervention which might undermine further his parental role and his relationship with his son. The understanding of both was that if any disagreement about the child’s welfare came before the court, a residence order to the mother would be granted, because young children have generally been seen as belonging with their mothers. These traditional views of parenting were reinforced by those of the father’s solicitor who, in spite of the family’s long-established and continuing dual parenting, advised against the costs and risks of adopting a more challenging stance. None of these adults was formally required to take account of Matthew’s wishes and feelings which consequently, and as often happens in outwardly uncontested cases (Houghton-James, 1994; Douglas, Murch and Perry, 1996), were never explicitly explored. Indeed unless private proceedings are contested, the courts are not currently required to have regard to the welfare checklist set out in section 1(3) of the Children Act 1989 (Department of Health, 1991).

No contact arrangements were put in place and this, combined with the loss of daily contact with his father and a sense of geographical distance from him, led the boy to feel he was losing him. Matthew’s father meanwhile left with the court, in the formal Statement of Arrangements, the original child-care details which bore no resemblance to reality. When Matthew moved away, his father was changed from being a half-time carer to a parent...
constantly trying, but frequently in vain, to make arrangements to see his son. Interestingly
the work of Kruk (1992) suggests that close child–father relationships prior to separation
may be particularly threatened by the constraints and pseudo-parenting associated with
non-residential status.

Surgit

In Surgit’s case, such were the circumstances of his parents’ separation that agreement on
most issues was impossible, and a report was requested by the court from the welfare
service. He and his mother moved 100 miles away to her parent’s home and 6 months’
delay prior to the residence hearing gave her the advantage of arguing for the status quo.
In the absence of any formal arrangements to see his father during this period and given
the mother’s lack of recognition of the importance of this and her poor commitment to it in
practice, the child had no contact with him. Even after an interim court hearing granted
weekly contact increasing to weekend stays, Surgit’s father faced constantly changing
arrangements and had no recourse to any helping agencies except his solicitor. Approaches
to the family court welfare officer established that her brief did not stretch to advice or
intervention.

For Surgit, support and action to operationalise the court’s orders would have been
invaluable. Events associated with contact visits in the first 8 weeks demonstrated just how
dependent a child’s relationship with an absent parent is on the cooperation of both adults
in nurturing it. On one occasion Surgit’s father arrived to collect him as arranged but found
no one at home; on another, when he returned his son as agreed, the child’s mother failed to
appear; once he received written confirmation of overnight staying arrangements but,
without explanation, these were cancelled 12 hours later; and finally the child’s maternal
relatives threatened him with violence. Paying attention to the child’s distress, I encouraged
his parents to think in terms of attachment and loss, and to persevere in seeking mutually
acceptable ways of establishing regular contact between him and his father.

‘How will I know if I will see Daddy if Mummy doesn’t tell me?’

In Matthew’s case his father had had no contact with the court welfare service so, in
contrast to Surgit’s father, he harboured no illusions that any helping agency might be
concerned about his child’s interests. Both men recognised, and indeed one tested out, that
in the absence of any immediate child protection concerns local authority social workers
were unwilling to become involved: there was no ‘child protection tag as an entry ticket to
family support services’ (Department of Health, 1994, p 15). After many months of fraught
communications, bargaining and on–off arrangements, during which Matthew asked if
and how he would be able to keep seeing his father if his mother did not ‘tell him’ this,
I enabled his parents to establish a regular pattern of visits between the child and his
father, and to work together to restore this relationship. My role involved maintaining
contact with the child in his own right, seeing each parent separately, and being accepted
by both as not aligned with either but advocating for the child. A turning point came when
Matthew’s mother saw the benefits to Matthew associated with both parents’ cooperation
in sharing the transport for three weekly long-distance round trips taking the child to a
familiar but neutral venue midway between his parents’ homes.
Matthew’s question encapsulated his—and Surgit’s—powerlessness and dependency, and served as a reminder of the different agendas and the poor communication systems within separating and separated households. Reinforcing the findings of earlier studies Cockett and Tripp (1994) report that many parents do not give children explanations for their changing circumstances nor do they ensure that a child knows the whereabouts of her/his non-resident parent. Children, on the other hand, want earlier and greater involvement in contact arrangements as they believe this would minimise conflict all round and enhance the quality of time spent with their non-resident parent. Indeed 18% of the children in their study had had to manage the unwelcome responsibility of making their own contact arrangements because their parents would not speak to one another.

The myth of shared post-divorce parenting

The Children Act 1989 is based upon the ‘once a parent always a parent’ premise (Roche, 1991, p 345) and the legislation has been designed to reduce unnecessary intrusion in family life. In addition it has broken down some of the previous distinctions in the orders available in private and public hearings, requiring carers to treat as paramount the interests of all children regardless of whether their cases are associated with divorce or care proceedings. But the assumption on the part of the law and statutory agencies that, unaided, parents in cases such as these can agree and satisfactorily put into practice arrangements for shared parenting is ill-founded.

Marital breakdowns involving children clearly pose the adults with terrible dilemmas. The wisdom of Solomon is needed in situations where both parents are deeply attached to a child, where both can and wish to provide a loving home but are living too far apart for the child to spend time more or less equally between them, and when neither wishes to accept peripheral parenthood. It might be argued that caring parents in such circumstances should try to organise their lives in separate households in close proximity to one another, but financial necessity leads people to go where they can find work or accommodation. Thus, for children like Matthew and Surgit, separation from either their father or mother becomes inevitable for prolonged periods of time and great commitment is needed if shared parenting is to have any meaning. In the absence of positive shared parenting, the retention of the child’s relationship with the non-resident parent is likely to come under increasing threat but action to protect and develop it may come from getting the parents to take on board the child’s perspective.

The need for independent representation

Addressing the circumstances of children in separating families, Wyld (1992, p 19) of the Children’s Legal Centre argues that:

children should be made parties to private law proceedings in all cases unless the court is satisfied that their welfare can be appropriately safeguarded by the appointment of a court welfare officer . . . [But t]he question of who is a ‘proper person’ to act as guardian in private law proceedings is a taxing one . . . The law urgently needs reform to enable panel guardians to be appointed in private law proceedings.

Murch, Hunt and MacLeod (1990) suggest that in private as in public proceedings the court should be able to order either a welfare report alone or with legal representation for the
Child, or the appointment of a guardian *ad litem* and solicitor. Surgit needed an advocate from the moment of his parents’ initial separation. As a young child he could not speak for himself, even if someone with influence had been prepared to listen, so he was particularly dependent on the adults involved to behave in a child-centred manner, although the adversarial nature of divorce proceedings does little to promote this. The possibility of using a mediation service came to the family’s attention too late to be relevant but may not have been culturally appropriate or successful. Moreover those few studies which have been published on the involvement of children in conciliation indicate that, even when agencies have policies promoting the participation of children in the process, this only happens in a minority of cases and in respect of adolescent rather than pre-school children (Garwood, 1992). Interventions are also focused on planning residence and contact arrangements rather than on their continuing implementation in the changed and changing circumstances of disrupted family lives separated by long distance, and, as Raitt (1996) points out, systematic analysis is lacking as to whether mediated agreements operate in the child’s best interests.

Research by James and others (1992, p 407) suggests that the involvement of the family court welfare service in divorce proceedings is not synonymous with the presentation to the court of children’s perspectives nor is the same attention paid by the appointed officer to the parent with whom the child is living as to the other parent. Citing a number of studies, including one on the court welfare service, Baker and Townsend (1996, p 221) argue that ‘welfare professionals may operate a covert form of discrimination against fathers’. Surgit’s father did indeed feel disadvantaged by the welfare officer’s apparent disinterest in the child’s relationship with him as evidenced by the scant amount of time she spent with either of them compared with that allocated to the mother. He was concerned too that the focus of this worker, a much older white woman, was on the nuclear family unit which overlooked the significance of the past and the child’s upbringing in a close extended family. Such a ‘tendency’ on the part of family court welfare officers ‘to ignore or not examine clients’ histories and to look towards the future rather than the past when making decisions about contact’ emerged in Hester and Radford’s (1995, p 56) study of domestic violence and child contact arrangements.

Matthew also needed someone to listen to him and to place his needs, wishes and feelings explicitly on the agenda as his parents’ divorce took effect in changed living arrangements. Given his history of active parenting, his father, like Surgit’s, believed that objectively it was in the child’s interests to maximise contact with him. However, he feared that, in pressing for this, he would stand accused of using his son as a pawn in getting his own needs met. Both fathers avoided such a charge by maintaining a low profile on this issue but longed for the help of what one of them called ‘a dispassionate outsider’, who would bring them into negotiation with their child’s mother to consider the boy’s needs and how best they might be met through residence and contact arrangements, with particular attention being paid to implementation.

**Child-centred options for intervention and implementation**

Current legal provision for the management and resolution from a child-centred perspective of parental conflicts is limited and problematic. A Family Assistance Order (Children Act 1989 section 16) offering short-term advice, assistance and befriending to families in
conflict was not made in respect of either family. Matthew’s parents were ostensibly cooperating in parenting their child and an order would have seemed unnecessary to the court. Surgit’s parents, on the other hand, could agree about nothing and this precluded the making of such an order which requires the consent of both parents, and is only for use in exceptional circumstances. In practice these orders have been little used (Wyld, 1994).

The fathers’ proposal for a ‘dispassionate outsider’ raises the possibility of intervention by a social worker acting under section 17 or section 47 of the Children Act 1989 and/or the appointment of a guardian ad litem. This is what Surgit’s father sought when faced with a child who was clearly suffering from lack of contact with him: the boy changed from a biddable, outgoing and babbling toddler into a withdrawn and silent child. The short and long-term vulnerability of children, especially only children (Wallerstein and Kelly, 1980) of divorced households, has been increasingly exposed, and Cockett and Tripp’s (1994) research shows that, in comparison with children of intact families, those in families re-ordered in the wake of separation or divorce experience more health, education and social problems, and lowered self-esteem. Arguably this was an instance where it would have been appropriate for a social worker to behave proactively, making inquiries and analysing whether family support services could have been helpful (Department of Health, 1994).

Militating against social services’ involvement is the current skewing of child care practice towards investigation of sexual abuse, policing of disadvantaged people’s parenting habits, rescue and protection as highlighted in a number of reports (Audit Commission, 1994; Thorpe, 1994; Farmer and Owen, 1995). Compared with some European child protection services, the peculiarly English and Welsh focus on investigations and initial case conferences contributes to the deflection of resources away from work promoting, as opposed to safeguarding, children’s well-being (Hallett, 1993; Department of Health, 1995).

With respect to the appointment of a guardian ad litem, the courts were directed not to appoint panel guardians to act in family matters after difficulties had arisen over their payment for non-statutory work (Wyld, 1992). Robertson (1993) states that this was a Treasury-driven decision and one more concerned with short-term than longer-term costs for the state and for children. Children’s panel solicitors had been appointed in some courts as guardians and they could if they wished engage a panel guardian to act as their independent social work expert, but this could cause role confusion and preclude the normal use of complaints channels (Wyld, 1992).

The Department of Health and Welsh Office Children Act Report 1992 (1993, p 77) acknowledges that:

> some confusion has been encountered as to the role of a panel guardian when invited to act in private law proceedings … There is no provision under the Act to appoint panel guardians in private law proceedings. The usual approach, endorsed by the Court of Appeal (Re H (Minors) unreported) is that a divorce court welfare officer’s report should suffice. In exceptional circumstances, and only in the High Court and County Courts, the Official Solicitor might be invited to act. The Lord Chancellor’s Department has issued guidance as to the kind of cases which that office will be prepared to consider. If the Official Solicitor intervenes he may ‘contract’ this work to guardians some of whom may be panel guardians—to act as his agents. In these cases the guardian’s reasonable costs will be met by the Official Solicitor.
More recently the issue of how children’s views can best be presented in private law proceedings was raised in the High Court when a deputy judge, in a hearing on residence, ordered, *inter alia*, separate representation by a child care panel solicitor for three siblings but did not join them as parties (Children Act News 1994, p 7). In *In re L (minors—parties)* the Court of Appeal subsequently ruled in a reserved judgement that:

> For practical reasons, children intervening in family applications in the High Court should be made parties ... The procedure in private law applications is governed by the Family Proceedings Rules 1991. But these do not state whether children are to be parties. [Lord Butler-Sloss] added that there had been insufficient argument for her to come to a clear conclusion on this point. However, her present view is that in High Court proceedings the 1991 Rules do not alter the general procedural rules in Order 80, Rule 2 of the Rules of the Supreme Court 1991 that children are to be parties.

In this particular case, in which a court welfare officer was already preparing a report, the children had legal aid and an experienced solicitor, who was then named as their representative. An alternative mechanism for ascertaining a child’s wishes and feelings is for the justices to see the child in private. Reporting this, Children Act News (1994, p 7) points out that the Children Act is ‘silent ‘on this matter but two Court of Appeal judgements concluded that it should only be used in rare and exceptional circumstances involving a guardian *ad litem* or welfare officer.

Having failed to obtain assistance from the social services department, Surgit’s father tentatively suggested to his solicitor the engagement of a guardian *ad litem* but this was to no avail. The father did not know who else could raise this possibility on his child’s behalf or with whom, or indeed how else it might get on to the agenda. For children as young as Surgit and Matthew, who are not of sufficient understanding to apply for the court’s leave to seek a section 8 order in their own right and thereby gain access to support and representation, this lack of provision of an independent advocacy service is particularly serious.

**Post-divorce arrangements**

Children in separating families need ongoing help: their need is for child-centred intervention at the time of separation, at the moments of legal decision-making and afterwards too, in order that changing circumstances as well as court rulings to preserve their relationships with both parents can be managed in their interests (Douglas, Murch and Perry, 1996). Such provision may serve to change the present situation in which, as Baker and Townsend (1996, p 219) assert from the evidence of several studies, ‘most children of divorced parents rarely see their fathers’. Surgit became the object of prolonged disputes and Matthew’s mother and father reached an impasse when it came to implementing the courts’ decisions with regard to each child’s contact with his absent parent.

The boys’ experiences are typical of those of many children coming to the attention of IRCHIN, an organisation which for 15 years has been developing independent representation services for young people. Its director Timms (1995, p 32) reports that amongst youngsters in divorcing and separating families common and serious problems include powerlessness ‘in the face of articulate and determined adults and an adversarial, court-driven machinery for the regulation of disputed arrangements concerning residence and contact’; a sense that no one is listening to them; guilt about voicing their feelings when their parents’ needs are in conflict; gradual loss of extended family relationships
leading to isolation not just from the non-resident parent but from other relatives too; confusing and complex contact arrangements which fragment children’s lives and change at short notice with little account taken of the child’s position; and ‘the lack of any clearly identified service which children can recognise as being the right place or people for them to approach with their problems’ during and after divorce or separation.

In terms of provision, the growing number of access and contact centres offer a valuable neutral place where children can be ‘handed over to’ or spend time with their non-resident parent, but they rely on volunteer helpers and many strive to adopt a low-profile non-aligned position rather than taking a more proactive stance (Simpson, 1994). Kaye (1996, p 296) has described the level of provision as ‘paltry’ and ‘available primarily for English-speaking families’. Reference has already been made to the narrow brief of the divorce court welfare services and the limited interventions of conciliation and mediation services. The latter point is further underlined by Durkin and Mesie’s (1994, p 288) report of the Cambridgeshire Court Welfare Service dealing annually with some 150 children of parents for whom mediation and conciliation have been ‘unsuccessful and inappropriate’. Wishing to respond more positively to the ‘traumatic and long-lasting’ effects of divorce and separation on such children, Durkin and Mesie (1994, p 285) set up a pilot project using groupwork to address some of their unmet needs. Their work was informed by research in the UK and the USA indicating that children are more likely to suffer emotional and other difficulties as a result of parents separating in conflict rather than with consent, and that they are also likely to adjust better if they can retain a meaningful and constructive relationship with both parents.

Concluding comments

In the absence of children’s advocacy and support facilities being made available throughout the process and in the aftermath of separation and divorce, what emerged clearly in both these cases was a progressive endangering of each of these children’s relationship with his father as the non-resident parent. No mechanism was formally put in place or was ever in prospect by which both parents could be brought together to work out in practice the implementation of the court’s decisions on shared parenting and contact. Neither at the point of separation, nor in the course of the subsequent court hearings, nor after residence and contact decisions had been made was any independent person available to engage formally with these families from a child-centred perspective or to act independently for their children.

Hester and Radford’s (1995) research has shown that, notwithstanding a context of domestic violence, many mothers strive to preserve their children’s relationships with their fathers and much has been written about the problems for the resident parent, traditionally the mother, of exercising parental responsibilities single-handedly, in poverty and when the other parent is uncooperative, if not obstructive or abusive. With respect to the interplay between children’s welfare, financial support and the contribution of the non-resident parent, the implementation in 1993 of the Child Support Act 1991 quickly lived up to the fears of its critics that, far from promoting the interests of children, it would introduce instead further acrimony and hardship into the lives of affected families. But it has had the merit of exposing the commitment of some non-resident parents, predominantly fathers, to retaining relationships with their children over long distances and at very considerable expense.
More attention needs to be paid to breakdowns in relationships where a parent has to exchange an active parenting role for one of periodically visiting and visited parent. Specifically we need to learn more about the ways in which non-resident fathers manage to sustain meaningful relationships with their children over the period of separation and beyond divorce (Simpson, McCarthy and Walker, 1995; De’Ath, 1996). As Moss (1994, p 1) points out with respect to fathering:

Public discussion in Britain is dominated by absent fathers, abusive fathers, or fathers failing to provide for their children … The more positive issue of men as carers for children, and encouraging fathers to take a more equal share of caring responsibilities, gets little attention.

This contrasts with the Swedish situation (Andersson, Kihlblom and Sandqvist, 1993, p 11) where legal intervention concerning divorce and custody has progressed from a concern primarily with the visiting rights of non-resident parents to incorporate ‘an increasing emphasis on the father’s contribution, stressing the children’s rights to have extensive contact with both their parents’. In a study of family policy, Andersson, Kihlblom and Sandqvist (1993, p 18) report that biological father/child contact in respect of 6 to 8-year-olds living with their single mother/mother and stepfather correlated significantly with school achievement and social adjustment at 13 years of age, as judged by teachers:

For boys, there was a dramatic difference according to the father contact: the more extensive the father contact, the better the boys’ school performance, and the better their general social adjustment.

Surgit’s and Matthew’s cases illustrate that individually committed fathers (and mothers) in England and Wales can face particular and continuing problems in fulfilling the role of non-resident parent when unsupported they try to protect their relationships with their children. When they conflate their own and their child’s interests, as also happens to many mothers who have separated from abusive partners/fathers (Hester and Radford, 1995), they may be accused of using the child as a pawn to get their own needs met. But, if they separate the two, generally they will find that no one is available to act for the child in his/her own right, especially if the latter is not deemed mature enough independently to instruct a solicitor. What is required in such circumstances is not just statutory intervention with an overall focus on welfare including addressing the needs of the parents in order to improve the quality of care of the child (Department of Health, 1994) but, as Durkin and Mesie (1994, p 286) suggest, ‘the provision of child-focused services in a currently adult-dominated arena’. These are the key tests against which to judge the value of forthcoming legal and administrative changes in the domain of divorce.

The Family Law Act 1996 has now been passed and is likely to be implemented within 2 years. The legislation is designed both to minimise conflict in divorce by removing the notions of matrimonial fault and blame and to support the institution of marriage. Its focus is not therefore on parenthood: only children of married couples are affected. Initially help for children was only to be indirect, for example through their parents attending an information session or engaging voluntarily in mediation. Late amendments to the drafted legislation now mean that courts routinely will have to take into account children’s views, parents’ conduct in relation to their upbringing, the retention of family relationships, and possible risks to children in terms of future living and caring arrangements. Clearly there is potential here to influence contact arrangements for children and, for those like Matthew and Surgit, to move away from the presumption of one settled maternal home towards that of shared residence with the stress on predictability and stability (Baker and Townsend 1996). However, as Pryor and Seymour (1996) point out, the latter may not be promoted by
delays associated with the 18-month ‘reflection’ period (Haskey, 1996b). The legislation stops short of making children parties in private law proceedings but importantly, as Perry (1996, p 13) reports, some separate representation of children is to be made available:

Although it is not yet known in what ‘specified circumstances’ such representation will be allowed, the inclusion in the Act of any such provision will be seen as an achievement for children’s rights campaigners and a very positive step towards recognition that the wishes and needs of children are not always in line with those of their parents.

Optimism that the new legislation and post-separation family caring practices may prove to be more child-centred in cases such as those discussed here is tempered by the lack of clarity to date as to how children’s views will reach the court. These may still be dismissed, for example on grounds of age or immaturity. Currently mediation of ‘child-related issues is parent-focused’ and there is only ‘a hint’ that this will change (Douglas, Murch and Perry, 1996, p 129). Enquiries about parents’ conduct in relation to children’s upbringing may enable past caring practices to be considered in relation to future child care arrangements, but they may also fuel accusations of fault and blame.

The future role of the family court welfare service in working with divorcing families is unclear—probation officers’ training is in transition, they have not developed a strong child-centered focus in their work (Cantwell and Trinder, 1993) nor are they adopting a proactive stance regarding shared parenting (Baker and Townsend, 1996). Local authority social workers are being encouraged to make more use of their Children Act 1989 section 17 powers to meet children’s needs and promote their welfare (Department of Health, 1995), but they have insufficient resources (Kilkelly, 1996) and their involvement may be perceived as stigmatising. As Cantwell and Scott (1995, p 340) argue, firm emphasis is needed in these changing circumstances on promoting the best possible parenting ‘involving the positive and active support of the child’s continuing relationship with all parts of his or her family network’.

Essentially the efficacy of the proposed system of representation for children will depend heavily upon proper funding being made available and staff skilled in such work being child-focused and available to children and their families at their differing times of need. Short-term economies on these fronts are likely to have longer-term consequences for children’s post-divorce relationships and for their own future parenting practices.

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